



STATE OF ARIZONA
DIVISION OF EMERGENCY
MANAGEMENT



RECOVERY SECTION

STANDARD OPERATING PROCEDURES

PUBLIC ASSISTANCE PROGRAM

SECTION 2

AUTHORITY & ELIGIBILITY

Rev 5/08



**STATE OF ARIZONA
DIVISION OF EMERGENCY MANAGEMENT
PUBLIC ASSISTANCE PROGRAM
STANDARD OPERATING PROCEDURES**



AUTHORITY AND ELIGIBILITY

The Public Assistance Program provides supplemental aid to State, County, and local government agencies and political subdivisions to help them recover from disasters as quickly as possible. Disasters may be natural or man-made such as hurricanes, tornadoes, storms, droughts, wildland fire, flood and explosion. The effects of disasters may be limited to a single community or widespread such as floods or hurricanes affecting several states.

The Arizona Revised Statutes §§ 26-301 et seq., 35-192 et seq. is the authority for the State to provide emergency assistance to state agencies and local jurisdictions to recover from the damages incurred as a result of a disaster. The Governor may provide state assistance to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona. **Title 8. Emergency and Military Affairs, Chapter 2. Department of Emergency and Military Affairs Division of Emergency Management Supp.03-1** details the state's authority to provide this assistance.

If recovery from the event exceeds the capability of the state, the Governor may request a Federal Declaration through the FEMA Regional Office. **Title 44 of the Code of Federal Regulations (CFR), Part 206-Federal Disaster Assistance for Disasters Declared on or after November 23, 1988** provides rules, policies and procedures issued by FEMA. These regulations are followed by FEMA in the implementation and administration of federal disaster programs. The regulations applicable to the Public Assistance (PA) Program are contained in Subparts G, H, and I. The regulations set forth in Parts 9 (Floodplain Management and Protection of the Wetlands), 10 (Environmental Considerations), 13 ("Common Rule" of Grant Administration), and 14 (Audits) of 44CFR are also applicable to projects funded under the PA Program.

ELIGIBLE APPLICANTS

State Agencies Political Subdivisions

Political Subdivision means any county, incorporated city or town, or school, community college or other tax-levying public improvement district.

ELIGIBLE FACILITIES

Eligible Facilities are those owned by the State or Political Subdivisions of the state:

- (A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development or airport facility.
- (B) Any non-Federal-aid street, road or highway
- (C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.
- (D) Any park

PRIVATE NONPROFIT FACILITY

The Arizona State Statutes preclude assistance to Private Nonprofit Facilities (PNP) under a state disaster declaration. PNPs, however, may be covered by a Federal Disaster Declaration.

Private Nonprofit Facility (PNP) means private nonprofit educational, utility, emergency, medical rehabilitation, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.

ELIGIBLE WORK

Eligible Work is based on the following criteria:

- (A) It must be a direct result of the declared disaster.
- (B) Located within the designated disaster area.
- (C) It must be the legal responsibility of the eligible applicant.

Eligible Work is divided into two types of work, emergency and permanent, and then further divided into seven difference categories of work:

Emergency Work

1. Category A – Debris Removal
2. Category B – Emergency Protective Measures

Permanent Work

3. Category C – Roads and Bridges
4. Category D – Water Control Facilities
5. Category E – Buildings and Equipment
6. Category F – Utilities
7. Category G – Parks, Recreational Facilities and Other Items

ELIGIBLE COSTS

Not all costs incurred in responding or recovering from a declared event are considered eligible for reimbursement under the Public Assistance Program. Eligible Costs must be:

- (A) Reasonable and necessary to accomplish the work.
- (B) Compliant with State and local procurement procedures. (During a Federal Declaration of Emergency applicants must also comply with Federal procedures.)
- (C) Reduced by all applicable credits such as insurance proceeds or salvage values.

The eligible costs apply to those direct costs incurred such as labor, equipment, materials or contracts awarded for the performance of eligible work. **Title 8. Emergency and Military Affairs, Chapter 2. Department of Emergency and Military Affairs Division of Emergency Management Supp.03-1, section 313 describes Allowable Claims Against the Fund for a State declared event.**

TITLE 8. EMERGENCY AND MILITARY AFFAIRS
CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT

Supp. 03-1

(Authority: A.R.S. §§ 26-301 et seq., 35-192 et seq.)

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

Article 3, consisting of Sections R8-2-301 through R8-2-330, adopted effective September 18, 1996 (Supp. 96-3).

Article 3, consisting of Sections R8-2-33 through R8-2-39, repealed effective September 18, 1996 (Supp. 96-3).

Article 3, consisting of Sections R8-2-33 through R8-2-39, adopted effective June 11, 1980.

Former Article 3, consisting of Sections R8-2-33 through R8-2-38, repealed effective June 11, 1980.

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ARTICLE 3. GOVERNOR'S EMERGENCY FUND

R8-2-301. Definitions

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Applicant" means any state agency or political subdivision of the state that requests emergency assistance from the state.
2. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
3. "Application" means a written or verbal request by an applicant to the Director for emergency assistance.
4. "Contingency proclamation" means the document in which the governor authorizes the Director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue, and hazardous materials spills.
5. "County" means the county or counties where an emergency is located.
6. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.
7. "Eligible work" means actions taken and work performed by an applicant in response to an emergency that are consistent with the intent and purposes set forth in A.R.S. § 35-192 and these rules.
8. "Emergency" means any occasion or instance for which, in the determination of the Governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
9. "Emergency resolution" means a document by which the governing body of a political subdivision declares an emergency.
10. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
11. "Incident period" means the time interval of an emergency during which damage occurs.
12. "Political subdivision" means any county, incorporated city or town, or school, community college, or other tax-levying public improvement district.

13. "Proclamation" means the document in which the Governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.
14. "State" means the state of Arizona.
15. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-302. Applications for Emergency Assistance

- A. An applicant shall act for the purpose of this Article through its chief executive officer or body, or the applicant's authorized representative.
- B. An applicant shall use forms that are in the "Disaster Assistance Guide", ADEM Publication 100, June 1996 (and no future amendments or editions), which is incorporated by reference and is on file with ADEM and the Office of the Secretary of State.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-303. Contents of an Application

- A. An applicant shall set forth in an application the cause, location, and beginning date of the emergency, a description of the damage caused by the emergency and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the Director, the applicant shall use its available resources to respond to the emergency and request assistance from other political subdivisions that might respond to the emergency.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-304. Application by a Political Subdivision

- A. A county shall issue an emergency resolution before submitting an application to the Director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the Director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the Director for assistance.
- C. A political subdivision shall submit an application to the Director using the most expeditious means.
- D. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-305. Application by a State Agency

- A. An applicant that is a state agency shall submit an application directly to the Director using the most expeditious means.
- B. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the state agency shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-306. Action on an Application

- A. The Director shall make a recommendation to the Governor whether to issue a proclamation.
- B. The Director shall notify the applicant immediately by telephone or, if necessary, in writing, of the Governor's decision to issue or not to issue a proclamation. If the Governor issues a proclamation, the Division shall forward a copy to the applicant.
- C. The Governor shall prescribe in the Governor's proclamation the maximum amount for which the state will be liable for the emergency that is the subject of the proclamation.
- D. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or the amount prescribed in the proclamation, whichever is less.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-307. Proclamation File Number

- A. The Division shall assign a file number to each emergency that is the subject of a proclamation.
- B. All correspondence regarding an emergency to which a file number is assigned shall reference the file number.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-308. Limitation of Fund Expenditure

Expenditure from the fund, as a result of a particular proclamation, shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the council as prescribed in A.R.S. § 35-192.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-309. Time Limit for Filing Claims

Before the ending date of the Governor's proclamation, the Director shall assess whether an extension of time is needed for an applicant to complete work and submit claims arising from an emergency. If the Director determines an extension of time is needed, the Director shall recommend that the Governor grant an extension.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-310. Retention of Records

The applicant shall maintain for five years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-1346 and shall make the records available for inspection and audit by the Department auditor and the auditor general.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-311. Establishment of the Incident Period and Termination of the Proclamation

- A. The Director shall recommend to the Governor, for inclusion in the Governor's proclamation, the beginning and ending dates of the incident period. If the Director determines that the incident period has a beginning or ending date different from that stated in the proclamation, the Director shall recommend to the Governor that the proclamation be amended to reflect the correct dates.
- B. At the Director's recommendation, the Governor shall terminate the proclamation when the following occur:
1. The recovery work is complete,
 2. The Division completes a final inspection of all work for which the applicant submits a claim,
 3. The applicant submits a claim to the Director for all work which the applicant seeks reimbursement,
 4. The Division pays all authorized claims,
 5. The required audits are complete, and
 6. The applicant receives amount due or pays amount owed.
- C. After the audit and final payment of the applicant's claims, the Governor shall issue a termination proclamation.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-312. Duplication of Benefits

- A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.
- B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.
- C. If the Director or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-313. Allowable Claims Against the Fund

- A. The Director shall allow expenditures from the fund for a claim arising from an emergency only if:
1. The amount claimed is a direct result of response or recovery operations to the emergency,
 2. The applicant is legally responsible for providing response or recovery operations in the emergency, and
 3. The amount claimed is authorized under the provisions of subsection (B) or (D).
- B. The Director shall allow the following costs to be paid as claims against the fund:
1. Salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible work;
 2. Salaries or wages and benefits of nonbudgeted employees directly engaged in eligible work;
 3. Communications;
 4. Travel;
 5. Materials and supplies consumed, except those listed under subsection (C)(2);
 6. Rental of privately owned equipment at documented contractual rates;
 7. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates;
 8. Owning and operating the applicant's equipment using rates approved by the Director;
 9. Work performed by private contractors;
 10. Work performed under an agreement between local governments or between a local government and a state agency, that is completely documented by the local government or state agency performing the work; and
 11. Prison labor including amounts paid to prisoners in accordance with established rates and costs of transporting prisoners.
- C. The Director shall not allow the following costs to be paid as claims against the fund:
1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
 2. Office supplies and equipment;
 3. Rental of administrative office space;
 4. Depreciation, insurance, storage, and similar fixed overhead costs;
 5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
 6. Work performed under agreement between a state agency or local government and a federal agency where the work is paid for by federal funds;
 7. Costs incurred under contracts based on cost plus a percentage of costs, unless the Director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the Director may authorize an exception; and
 8. Prison labor costs for food, lodging, and guards.
- D. To submit a claim for a cost that cannot be classified under subsection (B), an applicant shall make a written request to the Director for an exception. The Director shall grant a request for an exception if the request explains the nature of the exception and justifies why it is needed. The Director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.

E. When a facility damaged as a result of an emergency is repaired or replaced, the Director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-314. Mitigation of Future Damages by the Applicant

The applicant shall comply with any mitigation requirements specified by the Director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-315. Advance of Funds

All requests for an advance of funds shall be signed by the applicant's authorized representative and forwarded to the Director. The Director shall assess a request for an advance to determine whether the request is reasonable and for eligible work that has been completed. The Director shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-316. Final Inspection and Audit

Upon completion of all work by an applicant, the Division shall inspect all the work that the applicant claims. The applicant shall provide the Division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the Department's chief auditor shall conduct an audit of the applicant's claims. The Director shall use this audit to determine the allowability of claimed costs and final payment due to the applicant or overpayment due to the Division.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-317. Procurement Requirements

The Director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and A.A.C. R2-7-101 et seq.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-318. Inspection and Audit of Contract Provisions

If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-319. Refund from an Applicant

- A. If the Director determines that an applicant is required to refund an amount, the Director shall provide the applicant written notice of the amount owed. The applicant shall reimburse the Division within two months of the date of notification.
- B. An applicant may request a review, as set forth in R8-2-320, of a determination under subsection (A) that an amount must be refunded. If the review results in a decision that the applicant is required to reimburse the Division, the applicant shall refund the amount required within two months of the decision.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-320. Appeal of the Director's Decision

- A. Any party aggrieved by a decision rendered by the Director may appeal the decision, in writing, not later than 15 days after receipt of notice of the Director's decision.
- B. When an appeal is filed, the Director shall contact the Office of Administrative Hearings to schedule the case with the office in accordance with A.R.S. § 41-1092.02.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-321. Scope

The provisions of this Article apply to contingencies arising from hazardous materials incidents.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

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